

E.G. Sprinkler Corporation and its alter ego Goodman Piping Products, Inc. and United Association of Journeymen and Apprentices of the Plumbing & Pipefitting Industry of the United States and Canada (AFL-CIO). Case 3-CA-10974

28 February 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS
HUNTER AND DENNIS

On 24 March 1983 Administrative Law Judge D. Barry Morris issued the attached decision. The Respondent filed exceptions and a supporting brief, and the Charging Party filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions,² but not to adopt the recommended Order.³

ORDER

The National Labor Relations Board orders that the Respondent, E.G. Sprinkler Corporation and its alter ego Goodman Piping Products, Inc., East Rochester, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to recognize and bargain with United Association of Journeymen and Apprentices of the Plumbing & Pipefitting Industry of the United States and Canada (AFL-CIO) as the exclusive representative for purposes of collective bargaining of the employees in the following appropriate unit:

All employees engaged in the installation, dismantling, maintenance, repair, adjustments and corrections of all fire protection and fire control systems with the exception of steam fire protection systems.

(b) Refusing to honor and implement the collective-bargaining agreement in effect between E.G. Sprinkler Corporation and the Union.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and bargain collectively with the Union by acknowledging that it is bound by the existing collective-bargaining agreement in effect between E.G. Sprinkler Corporation and the Union.

(b) Honor, implement, and apply the collective-bargaining agreement referred to in paragraph 2(a).

(c) Make whole the Union for any and all benefit fund and other payments due and owing pursuant to the collective-bargaining agreement referred to in paragraph 2(a).⁴

(d) Make whole unit employees for any losses they may have suffered by reason of the Respondent's failure to honor and implement the existing collective-bargaining agreement with the Union.⁵

(e) Preserve and, on request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay and other sums and benefits due under the terms of this Order.

(f) Post at its East Rochester, New York, facilities copies of the attached notice marked "Appendix."⁶ Copies of the notice, on forms provided by

⁴ Because the provisions of employee benefit fund agreements are variable and complex, the Board does not provide for the addition of a fixed rate of interest on unlawfully withheld fund payments at the adjudicatory stage of a proceeding. We leave to the compliance stage the question of whether the Respondent must pay any additional amounts into the benefit funds in order to satisfy our "make-whole" remedy. Depending on the circumstances of each case, these additional amounts may be determined by reference to provisions in the documents governing the funds at issue and, where there are no governing provisions, by evidence of any losses directly attributable to the unlawful withholding, which might include the loss of return on investment of the portion of funds withheld, additional administrative costs, etc., but not collateral losses. *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). Other payments to the Union, if any, shall bear interest as prescribed in *Florida Steel Corp.*, 231 NLRB 651 (1977). See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).

⁵ The Respondent shall reimburse its employees for any expenses ensuing from the Respondent's unlawful failure to make the required payments referred to in paragraph 2(c) as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), *affd.* 661 F.2d 940 (9th Cir. 1981).

Backpay shall be made in a manner consistent with Board policy as stated in *Ogle Protection Service*, 183 NLRB 682 (1970), with interest as prescribed in *Florida Steel Corp.*, 231 NLRB 651. See generally *Isis Plumbing Co.*, 138 NLRB 716.

⁶ If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

¹ The judge found, as a factual matter, that on 7 January 1982 Goodman Piping Products, Inc. began performing sprinkler repair work covered by the collective-bargaining agreement entered into between E.G. Sprinkler Corporation and the Union, but without honoring and implementing the terms of that collective-bargaining agreement. Because we agree with the judge that Goodman Piping Products, Inc. is the alter ego of E.G. Sprinkler Corporation, we find that the Respondent violated Sec. 8(a)(5) and (1) of the Act as of 7 January 1982.

² In adopting the judge's decision, we note that his citations of *Blumenfeld Theatres Circuit*, 240 NLRB 206, 215 (1979), and *DMR Corp.*, 258 NLRB 1063, 1069 (1981), are inapposite because the Board found in each of the cited cases that the entities involved constituted a single employer, rather than that one was an alter ego of the other.

³ In order to correct certain inadvertent errors, we shall issue a new Order in lieu of the judge's recommended Order.

the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT refuse to recognize and bargain with United Association of Journeymen and Apprentices of the Plumbing & Pipefitting Industry of the United States and Canada (AFL-CIO) as the exclusive representative for purposes of collective bargaining of the employees in the following appropriate unit:

All employees engaged in the installation, dismantling, maintenance, repair, adjustments and corrections of all fire protection and fire control systems with the exception of steam fire protection systems.

WE WILL NOT refuse to honor and implement the collective-bargaining agreement in effect between E.G. Sprinkler Corporation and the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL recognize and bargain collectively with the Union by acknowledging that we are bound by the existing collective-bargaining agreement in effect between E.G. Sprinkler Corporation and the Union.

WE WILL honor, implement, and apply this collective-bargaining agreement.

WE WILL make whole the Union for any and all benefit fund and other payments due and owing pursuant to this collective-bargaining agreement.

WE WILL make whole unit employees for any losses they may have suffered by reason of our fail-

ure to honor and implement the collective-bargaining agreement with the Union, with interest.

E.G. SPRINKLER CORPORATION AND
ITS ALTER EGO GOODMAN PIPING
PRODUCTS, INC.

DECISION

STATEMENT OF THE CASE

D. BARRY MORRIS, Administrative Law Judge: This case was heard before me at Rochester, New York, on November 10 and 30 and December 1, 1982.¹ Upon a charge filed on April 5, a complaint was issued on May 21, alleging that E.G. Sprinkler Corporation and its alleged alter ego, Goodman Piping Products, Inc. (the Respondents), violated Section 8(a)(1) and (5) of the National Labor Relations Act (the Act). The Respondents filed an answer denying the commission of the alleged unfair labor practices.

The parties were given full opportunity to participate, produce evidence, examine and cross-examine witnesses, argue orally, and file briefs. Briefs were filed by all parties.

Upon the entire record of the case, including my observation of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

E.G. Sprinkler Corporation (EG), a New York corporation, with its principal office and place of business in East Rochester, New York, was engaged in the installation, repair, and maintenance of automatic sprinkler and fire protection systems. EG performed yearly services valued in excess of \$50,000 for companies located in States other than the State of New York. The Respondents admit that they are engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and I so find. United Association of Journeymen and Apprentices of the Plumbing & Pipefitting Industry of the United States and Canada (AFL-CIO) (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Issue*

The issue in this proceeding is whether Goodman Piping Products, Inc. (GPP) is the alter ego of EG and, as such, is responsible for carrying out the terms of the collective-bargaining agreement with the Union.

B. *The Facts*

EG was incorporated in 1973 with its stock owned 50 percent by James Goodman and 50 percent by George Edmunds. In 1979 Goodman purchased Edmunds' stock and thus became sole shareholder of the corporation. He

¹ All dates refer to 1982 unless otherwise specified.

operated and managed the Company by himself and was its only corporate officer.

EG entered into a collective-bargaining agreement with the Union, which was effective through March 31, 1982. The following employees were within the appropriate unit:

All employees engaged in the installation, dismantling, maintenance, repair, adjustments and corrections of all fire protection and fire control systems with the exception of steam fire protection systems.

During 1981 EG had approximately five employees performing installation work. During that year the Company experienced severe financial problems. These problems were based on a failure of its customers to pay for the work performed by the Company, which in turn led to a failure on the part of EG to pay its suppliers. Because of its financial difficulties and cash-flow problems, EG ceased operations on December 31. Its assets were surrendered to the bank on January 27, 1982.

GPP was incorporated on May 26, 1981, with Victoria Goodman, James' wife, as the sole stockholder, director, and officer of that corporation. The initial purpose of GPP was to manufacture a new pipefitting. Victoria testified that the reason for putting the new corporation in her name was to insure that Edmunds had no share in the ownership of the new pipefitting. Both EG and GPP shared the same offices and telephone numbers. Until October 1981 they were both located at 107 North Washington Street, East Rochester. At that time they moved their offices to 120 Despatch Drive, also in East Rochester.

When EG ceased its operations on December 31, 1981, James physically took the work orders which still had money owing. He also took blank EG work order forms and placed labels with the GPP name on them. On January 7 James did a small job for Rite Aid Corporation, under an invoice bearing the GPP name. The order had been received on December 28, 1981, on a job work order form bearing the name of EG. James testified that he did additional repair work in January on behalf of GPP.

The record contains evidence of numerous contracts for the installation or maintenance of fire protection equipment negotiated and signed by James on behalf of GPP during the period of February through October. James testified that except for one company, Stolt Realty, all the companies for which GPP did installation or maintenance work had been prior customers of EG.

Victoria testified that the first employee hired by GPP was Michael Deberger. She telephoned Deberger in February or March and offered him employment, doing installation work. She did not discuss the salary that Deberger would be paid. Victoria further testified that her husband was the first person to contact Todd Hopkins, another employee. She testified that her husband "sort of just talked me into hiring him" and that it was her husband who decided the salary that Hopkins would be paid. The next employee hired was Gregg Saulpaugh. Victoria testified that her husband hired Saulpaugh, decided his salary, and subsequently terminated him.

James testified that EG was involved only in the installation and maintenance of sprinkler systems. While 80 percent of GPP's work involves sprinkler systems, 20 percent of the work involves air piping. James conceded that 80 percent of GPP's work fits the definition of article 18 of the collective-bargaining agreement, entitled "Jurisdiction of Work." That the work of both Companies is substantially the same is further evidenced by the two Companies' advertisements in the yellow pages. Except for names, the advertisements are substantially identical, each stating "Sales—Design—Installation—Repair—Fire Protection Systems."

James initially testified that, while he did the hiring and firing of EG employees, it was his wife who performed those functions for GPP. He further initially testified that it was Victoria who signed certain contracts for GPP. When he was asked to specify the contracts signed by Victoria, he stated that he did not know. On further questioning, he changed his testimony and stated that it was he who indeed had signed all of the contracts. In addition, James did the initial work under the GPP name without his wife's knowledge and it was James who negotiated and signed a lease for the office on St. Paul Street. Both James and Victoria have authority to sign checks. While Victoria is experienced in office work, she is not experienced in the installation of sprinkler systems and she never goes out to the jobsites.

On January 20 or 21 James met with Wesley Wilder, the Union's business representative. James did not tell Wilder that he was performing sprinkler work under the auspices of GPP. James testified that it was his position that GPP was not covered by the union contract. In addition, James never offered jobs to any of the former EG employees who were in the unit and covered by the contract.

C. Discussion and Conclusions

1. Alter ego

In *Crawford Door Sales Co.*, 226 NLRB 1144 (1976), the Board stated the criteria for establishing alter ego status:

Clearly each case must turn on its own facts, but generally we have found *alter ego* status where the two enterprises have "substantially identical" management, business purpose, operation, equipment, customers, and supervision, as well as ownership.

Not all of these indicia need be present. See *Blumenfeld Theatres Circuit*, 240 NLRB 206, 215 (1979); *Blake Construction Co.*, 245 NLRB 630, 634 (1979), enf. granted in part and denied in part on other grounds 663 F.2d 272 (D.C. Cir. 1981).

The record establishes that both EG and GPP have been engaged in essentially the same business activities. While EG did sprinkler work exclusively, 80 percent of GPP's work is the same. Indeed the yellow pages advertisement for each corporation reflects the same type of work. The record further reveals that James not only managed EG but, in fact, he is managing GPP, as well. He hired, fired, and set salaries for the GPP employees.

He signed all of the Company's contracts, and negotiated and signed the lease for the St. Paul Street office and did the initial work under the GPP name without his wife's knowledge. He signed company checks and supervised the work in the field.

GPP's customers are for the most part former customers of EG. The record shows that, except for one company, all of the companies for which GPP did installation and maintenance work had been prior customers of EG. Indeed, after a hiatus of only 1 week,² James performed work for a company on behalf of GPP pursuant to a work order initially received by EG.

Finally, with respect to ownership, the stock of each corporation was owned by either James or Victoria. The Board has held that stock ownership in different corporations by members of the same family constitutes ownership and control which is "substantially identical." *Crawford Door Sales Co.*, supra, 226 NLRB 1144; *DMR Corp.*, 258 NLRB 1063, 1069 (1981); *J.M. Tanaka Construction*, 249 NLRB 238, 241 fn. 29 (1980), enf'd. 675 F.2d 1029 (9th Cir. 1982).

I find that EG and GPP have substantially identical management, supervision, and ownership. Both corporations engage in substantially the same business and they both have substantially the same customers. Accordingly, having considered all of the facts of this case, I conclude that GPP is the alter ego of EG.

2. Repudiation of collective-bargaining agreement

The complaint alleges that the Respondent repudiated the collective-bargaining agreement with the Union and withdrew its recognition of the Union as the exclusive bargaining representative of the employees in the appropriate unit. James testified that it was his view that GPP was not covered by the union contract. He did not inform the Union's business representative of the activities then being performed by GPP. Nor did he offer employment to any of the former EG unit employees. It is

² In *Blumenfeld Theatres Circuit*, supra, 240 NLRB at 217, the Board held that a 4-week hiatus between the closing of one operation and the institution of a second was not sufficient to terminate the employer's bargaining obligation.

clear that an alter ego is required to assume the obligations of its predecessor's collective-bargaining agreement. See *J.M. Tanaka Construction*, supra, 238 NLRB at 241. The Respondents' failure to do so is a violation of Section 8(a)(5) and (1) of the Act. See *Republic Engineering Co.*, 236 NLRB 1150, 1155 (1978); *Naccarato Construction Co.*, 233 NLRB 1394, 1401 (1977).

CONCLUSIONS OF LAW

1. E.G. Sprinkler Corporation, and its alter ego, Goodman Piping Products, Inc., are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The appropriate unit for purposes of collective bargaining within the meaning of Section 9(b) of the Act consists of:

All employees engaged in the installation, dismantling, maintenance, repair, adjustments and corrections of all fire protection and fire control systems with the exceptions of steam fire protection systems.

2. By failing to apply the terms of the collective-bargaining agreement between the Respondents and the Union, the Respondents have violated Section 8(a)(5) and (1) of the Act.

3. The aforesaid unfair labor practices constitute unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondents have engaged in unfair labor practices, I find it necessary to order them to cease and desist therefrom and to take affirmative action designed to effectuate the policies of the Act. In addition, I shall order that the Respondents make whole the appropriate individuals for any losses they may have suffered by reason of the Respondents' failure to honor the collective-bargaining agreement with the Union, including benefit contributions.

[Recommended Order omitted from publication.]